IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 12TH SEPTEMBER 2007 / 21ST BHADRA 1929

Crl.Rev.Pet.No. 1093 of 2000()

C.C.NO.318/1996 OF THE JUDICIAL MAGISTRATE OF THE FIRST CLASS-III, PUNALUR

REVN. PETITIONER:

THOMAS GEORGE, S/O.UMMAN GEORGE,
JOY COTTAGE, PATTAZHI MURI,
PATTAZHI VILLAGE.

BY ADV. SRI.G.BHAGAVAT SINGH

RESPONDENTS:
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1. THOMAS SAKAHRIYA,
S/O.JOSEPH THOMAS,
PUTHEN PARAMBIL HOUSE,
PIDAVOOR MURI,
PIDAVOOR VILLAGE.

2. STATE OF KERALA REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.T.KRISHNAN UNNI
PUBLIC PROSECUTOR, SRI C.K.SURESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 12/09/2007 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CRL.M.P.NO.5827/2000 IN CRL.R.P.NO.1093/2000

DISMISSED

SD/- K.R.UDAYABHANU, JUDGE

12/09/2007

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K.R.UDAYABHANU, J.

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Crl.R.P.No.1093 of 2000

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Dated this the 12th day of September, 2007

O R D E R

The revision petitioner is the accused in C.C.No.318/1996 in the file of the Judicial Magistrate of the First Class-III, Punalur, with respect to the offence under Section 138 of the Negotiable Instruments Act and sentenced to undergo simple imprisonment for six months.

2. The case of the complainant is that the accused borrowed a sum of Rs.30,000/- and issued the impugned cheque which when presented got dishonoured for want of funds in the account of the accused. The lawyer notice sent was not replied to nor was the amount paid.

3. The evidence adduced in the matter consisted of the testimony of PWs.1 and 2 and Exts.P1 to P6. PW.1 has testified as to the borrowal of the amount; as to the execution of the cheque; as to the dishonour of the cheque and; also with respect to the issuance of the lawyer notice. PW.2 is the bank manager. He has proved the fact that the cheque was dishonoured due to insufficiency of funds in the account of the accused, vide Ext.P6 copy of the ledger folio. DW.1 is

the wife of the accused. The defence case suggested is that the complainant influenced the servant of the accused, one Babu and managed to get a signed blank cheque from the business premises of the accused who is a dealer in rubber. It is further contended that the court below has not examined the handwriting or compared the admitted handwriting with the writings in the cheque. Although, it is submitted by the counsel that the application has to be sent to the handwriting expert, no such application is seen filed on verification of the case records. In view of the fact that the evidence of PW.1 stands unimpeached in the absence of any contradictions on material particulars and the evidence of PW.1 is supported by documents produced, that is, the impugned cheque, the fact that there was no sufficient funds in the account of the accused I find that the execution of cheque stands proved. The defence evidence adduced is not sufficient to rebut the statutory presumptions.

4. In the circumstances, I find no reason to interfere in the concurrent findings of the courts below as to the execution of the cheque and as to the dishonour of the same and non-payment of the amount after receipt of the lawyer notice. It is pertinent to note that

the accused has not sent any reply notice. In the circumstances, the conviction is confirmed.

Considering the plea of the counsel for the revision petitioner, the sentence is modified to imprisonment till the rising of the court and to pay a compensation of rupees thirty thousand and in default to undergo simple imprisonment for three months. The petitioner/accused may also pay the amount directly to the complainant. The revision petitioner is granted three months time to remit the amount of compensation. He shall appear before the Judicial Magistrate of the First Class-III, Punalur, on 17/12/2007 to receive the sentence.

The criminal revision petition is disposed of as above.

K.R.UDAYABHANU,
Judge

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K.R.UDAYABHANU, J.

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Crl.R.P.No.1093 of 2000

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O R D E R

12th September, 2007